TEXT OF PROPOSED LAWS

PROPOSITION 73

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This measure shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

SEC. 2. Declaration of Findings and Purposes

The people of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks to their children, and promoting parent-child communication and parental responsibility.

SEC. 3. Parental Notification

Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) For purposes of this section, the following terms shall be defined to mean:

(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child, a child conceived but not yet born. For purposes of this section, "abortion" shall not include the use of any contraceptive drug or device.

(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(3) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.

(4) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.

(5) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.

(6) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(b) Notwithstanding Section 1 of Article I, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in subdivision (c) and a reflection period of at least 48 hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subdivision (d) and a reflection period of at least 48 hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h), (i), or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this section.

(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent. A form for the notice shall be prescribed by the State Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) In lieu of the personal delivery required in subdivision (c), written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first-class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.

(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least 48 hours may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the State Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement: ***"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."*** *The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.*

(f) Notice shall not be required under this section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency as defined in paragraph (2) of subdivision (a).

(g) Notice shall not be required under this section if waived pursuant to this subdivision and subdivision (h), (i), or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notifications required pursuant to this section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time, and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent or guardian.

(2) If the judge finds, by clear and convincing evidence, that notice of a parent or guardian is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notice. If the finding that notice of a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse by a parent or guardian, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.

(3) If the judge does not make a finding specified in paragraph (1) or (2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted under paragraph (1) or (2) of subdivision (h), deemed granted under subdivision (i), denied under paragraph (3) of subdivision (h), and granted and denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The State Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the minor or her parent(s) or guardian by name or request other information by which the minor or her parent(s) or guardian might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the physician who performed the abortion, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed at least 48 hours after either personal delivery of a notice pursuant to subdivision (c) or presumed delivery of a notice by mail pursuant to subdivision (d) to a parent or guardian; or was an abortion performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); or was an emergency abortion performed without a notice pursuant to subdivision (f); or was an abortion performed after a judicial waiver of notice pursuant to paragraph (1) or (2) of subdivision (h) or subdivision (i) or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning it with the State Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The State Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, and the numbers of abortions performed after notice to a parent or guardian pursuant to subdivision (c) or (d); the numbers of emergency abortions performed without notice to a parent or guardian pursuant to subdivision (f); the numbers performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); and the number of abortions performed after judicial waivers pursuant to paragraph (1) or (2) of subdivision (h) or subdivision (i) or (j). The annual statistical report shall be made available to county public health officials, Members of the Legislature, the Governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of ten thousand dollars ($10,000). In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney's fees. Nothing in this section shall abrogate, limit, or restrict the common law rights of parents or guardians, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this section notice has been or will be delivered, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars ($1,000).

(q) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), paragraph (1) or (2) of subdivision (h), or subdivision (i) or (j), except where the particular circumstances of a medical emergency as defined in paragraph (2) of subdivision (a) or her own mental incapacity precludes obtaining her consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), paragraph (1) or (2) of subdivision (h), or subdivision (i) or (j), an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The State Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (e), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase, or word of this section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase, or word of this section would have been approved by voters irrespective of the fact than any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this section, nothing in this section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.

PROPOSITION 74

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Education Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This measure shall be known as the "Put the Kids First Act."

SECTION 2. Findings and Declarations

(a) California children deserve the best teachers available.

(b) Teachers currently are granted permanent employment status after only two years on the job. Experts believe that a teacher's ultimate potential and skill level cannot be fully assessed within just two years.

(c) Teacher assignments are based more on teacher seniority and tenure rules than on the needs of the students, depriving students of the best available educational experience.

(d) Once a teacher has permanent status:

(1) Union negotiated rules often require them to be assigned to positions by seniority rather than the needs of the students or best interests of a school.

(2) Teachers can usually be replaced, no matter how talented the replacement, only after a lengthy appeals process costing upwards of $150,000.

(e) There is an immediate need to give greater flexibility in the assignment of teachers in order to provide students with the greatest educational opportunity.

SECTION 3. Purpose and Intent

In enacting this measure, it is the intent of the people of the State of California to ensure that the needs of students will be given high priority in the assignment of teachers.

SECTION 4. Section 44929.21 of the Education Code is amended to read:

44929.21. (a) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter.

(c) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for five complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. The governing board shall notify the employee, on or before March 15 of the employee's fifth complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 2003–04 fiscal year or any fiscal year thereafter.

SECTION 5. Section 44932 of the Education Code is amended to read:

44932. *Grounds for dismissal of permanent employee; Suspension of permanent probationary employee for unprofessional conduct.*

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

(2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.

(3) Dishonesty.

(4) Unsatisfactory performance.

(5) Evident unfitness for service.

(6) Physical or mental condition unfitting him or her to instruct or associate with children.

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.

(8) Conviction of a felony or of any crime involving moral turpitude.

(9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

(10) Knowing membership by the employee in the Communist Party.

(11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

(c) The receipt by a permanent employee of two consecutive unsatisfactory evaluations conducted pursuant to Article 11 (commencing with Section 44660) of Chapter 3 shall constitute unsatisfactory performance as the term is used in this section, and the governing board of the school district may, in its discretion, and without regard for Sections 44934 and 44938, dismiss the employee by written notice on the basis of the employee's evaluation reports. Within 30 days of receipt of the notice of dismissal, the employee may request an administrative hearing which shall be conducted pursuant to Section 44944.

SECTION 6. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to teacher tenure shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SECTION 7. Severability

If any provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable.

SECTION 8. Amendment

This measure may be amended to further its purposes by a bill passed by a two-thirds vote of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media.

PROPOSITION 75

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Government Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title.

This measure shall be known as "The Public Employees' Right to Approve Use of Union Dues for Political Campaign Purposes Act."

SEC. 2. Findings and Declarations.

The People of the State of California find and declare as follows:

(a) Public employees are generally required to join a labor organization or pay fees to the labor organization in lieu of membership.

(b) Public employee labor organizations operate through dues or fees deducted from their members' salaries which are paid from public funds.

(c) Routinely these dues or fees are used in part to support the political objectives of the labor leaders in support of state and local legislative candidates and ballot measures. Public employees often find their dues or fees used to support political candidates or ballot measures with which they do not agree.

(d) It is fundamentally unfair to force public employees to give money to political activities or candidates they do not support.

(e) Because public money is involved, the public has a right to ensure that public employees have a right to approve the use of their dues or fees to support the political objectives of their labor organization.

(f) To ensure that public employees have a say whether their dues or fees may be used for political campaign purposes, it is fair and just to require that their consent be obtained in advance.

SEC. 3. Purpose and Intent.

In enacting this measure, it is the intent of the people of the State of California to guarantee the right of public employees to have a say whether their dues and fees may be used for political campaign purposes.

SEC. 4. Chapter 5.9 (commencing with Section 85990) is added to Title 9 of the Government Code, to read:

CHAPTER 5.9.

85990. (a) No public employee labor organization may use or obtain any portion of dues, agency shop fees, or any other fees paid by members of the labor organization, or individuals who are not members, through payroll deductions or directly, for disbursement to a committee as defined in subdivision (a) of Section 82013, except upon the written consent of the member or individual who is not a member received within the previous 12 months on a form described by subdivision (c) signed by the member or nonmember and an officer of the union.

(b) Subdivision (a) does not apply to any dues or fees collected from members of the labor organization, or individuals who are not members, for the benefit of charitable organizations organized under Section 501(c)(3) of Title 26 of the United States Code, or for health care insurance, or similar purposes intended to directly benefit the specific member of the labor organization or individual who is not a member.

(c) The authorization referred to in subdivision (a) shall be made on the following form, the sole purpose of which is the documentation of such authorization. The form's title shall read, in at least 24-point bold type, "Consent for Political Use of Dues/ Fees or Request to Make Political Contributions" and shall state, in at least 14-point bold type, the following specific text.

Signing this form authorizes your union to use the amount of $___.00 from each of your dues or agency shop fee payments during the next 12 months as a political contribution or expenditure." (__)

Signing this form requests your union to make a deduction of $___.00 from each of your dues or agency shop fee payments during the next 12 months as a political contribution to the (name of the committee). (__)

Check applicable box.

(Name of Employee)	*(Union Officer)*
(Name of Union)	*(Date)*
(Date)	*(Signature)*
(Signature)	

(d) Any public employee labor organization that uses any portion of dues, agency shop fees, or other fees to make contributions or expenditures under subdivision (a) shall maintain records that include a copy of each authorization obtained under subdivision (c), the amounts and dates funds were actually withheld, the amounts and dates funds were transferred to a committee, and the committee to which the funds were transferred. Records maintained under this subdivision shall not include the employee's home address or telephone number.

(e) Copies of all records maintained under subdivision (d) shall be sent to the commission on request but shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(f) Individuals who do not authorize contributions or expenditures under subdivision (a) may not have their dues, agency shop fees, or other fees raised in lieu of the contribution or expenditure.

(g) If the dues, agency shop fees, or other fees referred to in subdivisions (a) and (d) include an amount for a contribution or expenditure, the dues, agency shop fees, or other fees shall be reduced by that amount for any individual who does not sign an authorization as described under subdivision (a).

(h) The requirements of this section may not be waived by the member or individual and waiver of these requirements may not be made a condition of employment or continued employment.

(i) For the purposes of this section, "agency shop" has the same meaning as defined in subdivision (a) of Section 3502.5 of the Government Code on April 1, 1997.

(j) For the purposes of this section, "public employee labor organization" means a labor organization organized for the purpose set forth in subdivision (g) of Section 12926 of the Government Code on April 1, 1997.

SEC. 5. This measure shall be liberally construed to accomplish its purposes.

SEC. 6. In the event that this measure and another measure or measures relating to the consent of public employees to the use of their payroll deductions or dues being used for political contributions or expenditures without their consent shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SEC. 7. If any provision of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable.

SEC. 8. If this measure is approved by the voters, but is superseded by another measure on the same ballot receiving a higher number of votes and deemed in conflict with this measure, and the conflicting measure is subsequently held invalid, it is the intent of the voters that this measure become effective.

SEC. 9. This measure may be amended to further its purposes by a bill passed by a two-thirds vote of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media.

PROPOSITION 76

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by amending and repealing sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This measure shall be known as the "California Live Within Our Means Act."

SECTION 2. Findings and Declarations

(a) For the last four years, California has enacted budgets that have spent billions of dollars more than the state received in revenues.

(b) The Legislature is chronically late in passing budgets and seems institutionally incapable of passing balanced budgets.

(c) Spending will continue to rise faster than revenues because of laws guaranteeing annual increases in spending for a host of public services and granting entitlements to growing caseloads of qualified recipients. When combined with the refusal of the Legislature to change these laws, this auto-pilot spending is a recipe for California's bankruptcy.

(d) In March 2004, the people overwhelmingly enacted Proposition 58, the California Balanced Budget Act. The California Live Within Our Means Act is needed to strengthen that law to deal with budget emergencies when the Legislature fails to act.

(e) The Governor's current authority to veto or "blue pencil" excessive appropriations from budget bills cannot deal with spending mandates built into current law or with mid-year revenue losses or unexpected spending demands.

(f) The Governor needs the authority, when the Legislature fails to act in budget emergencies, to make spending reductions to keep the state from spending more than it is taking in and either running farther into debt or forcing massive tax increases.

(g) To meet the financial mandates of auto-pilot spending formulas enacted by the Legislature, the state has borrowed billions of dollars from schools, transportation funds, and local governments. The Constitution should prohibit such budgetary gimmickry and require the borrowed money be repaid without making current deficits worse.

SECTION 3. Purpose and Intent

In enacting this measure, it is the intent of the people of the State of California to enact comprehensive budget reform which will:

(a) Supply the tools that will help the state enact budgets that are balanced and on time so that the pressure for tax increases will be reduced; and

(b) Provide that if the Legislature fails to act in fiscal emergencies, the budget can be balanced by reductions in spending.

SECTION 4. Section 10 of Article IV of the California Constitution is amended to read:

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two-thirds of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

(d) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session.

(e) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(f) (1) *Commencing with the 2006–07 fiscal year and each fiscal year thereafter, the maximum amount of total expenditures allowable for the current fiscal year shall be computed by multiplying the prior year total expenditures by one plus the average annual growth in General Fund revenues and special fund revenues as defined in paragraph (3) for the three previous fiscal years.*

(2) For computing the average annual growth in revenues under paragraph (1), the amount of actual revenue for the fiscal year is to be used if available. If the actual amount of revenue is unknown, then the revenue shall be estimated by the Department of Finance through a regular and transparent process.

(3) "General Fund revenues and special fund revenues" means all taxes, any other charges or exactions imposed by the State and all other sources of revenue which were considered "General Fund" or "special fund" sources of revenue for the 2004–05 fiscal year. "General Fund revenues and special fund revenues" does not include revenues to Nongovernmental Cost Funds, including federal funds, trust and agency funds, enterprise funds or selected bond funds.

(4) The expenditure limit imposed by paragraph (1) may be exceeded for a fiscal year in an emergency. "Emergency" means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the State, or parts thereof, caused by an attack or probable or imminent attack by an enemy of the United States, epidemic, fire, flood, drought, storm, civil disorder, earthquake, tsunami, or volcanic eruption. Expenditures in excess of the limit pursuant to this paragraph shall not become part of the expenditure base for purposes of determining the amount of allowable expenditures for the next fiscal year.

(5) If total General Fund revenue and special fund revenues exceed the amount which may be expended for the current fiscal year due to the expenditure limit imposed by paragraph (1), the amount of such excess shall be proportionately attributed to the General Fund and each special fund. The amount of such excess attributed to each special fund shall be held as a reserve in that special fund for expenditure in a subsequent fiscal year. The amount of such excess attributed to the General Fund shall be allocated from the General Fund as follows:

(A) Twenty-five percent to the Budget Stabilization Account.

(B) Fifty percent to be allocated among the following according to the budget act: (1) to any outstanding maintenance factor pursuant to Section 8 of Article XVI in existence as of June 30, 2005, until allocated in full, but the amount so allocated in any fiscal year shall not exceed one-fifteenth of the amount in existence as of June 30, 2005;
(2) to the Deficit Recovery Bond Retirement Sinking Fund Subaccount,

so long as any bonds issued pursuant to the Economic Recovery Bond Act remain outstanding, and (3) to the Transportation Investment Fund, until such amount as was loaned to the General Fund during the 2003–04, 2004–05, 2005–06, and 2006–07 fiscal years has been repaid in full, but the amount so allocated in any fiscal year shall not exceed one-fifteenth of the amount in existence as of June 30, 2007. The deposit of funds pursuant to this subparagraph shall supplement, but not supplant, the transfers to the Deficit Recovery Bond Retirement Sinking Fund Subaccount required by paragraph (1) of subdivision (f) of Section 20 of Article XVI.

(C) Twenty-five percent to the School, Roads, and Highways Construction Fund, which is hereby created in the Treasury as a trust fund, which shall be available for road and highway construction projects and for school construction and modernization projects, upon appropriation by the Legislature. Any funds allocated to school districts pursuant to this provision are not subject to Section 8 of Article XVI.

(D) No funds expended pursuant to subparagraph (B) or (C) are part of the expenditure base for the purposes of determining the amount of allowable expenditures pursuant to paragraph (1) for subsequent fiscal years.

(g) (1) If, following the enactment of the budget bill for the 2004–05 fiscal year or any subsequent fiscal year, the Governor ~~determines that, for that fiscal year, General Fund revenues will decline substantially below the estimate of General Fund revenues upon which the budget bill for that fiscal year, as enacted, was based, or General Fund expenditures will increase substantially above that estimate of General Fund revenues, or both, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session for this purpose. The proclamation shall identify the nature of the fiscal emergency and shall be submitted by the Governor to the Legislature, accompanied by proposed legislation to address the fiscal emergency.~~ *at the end of any quarter determines that, for that fiscal year, General Fund revenues have fallen by a rate of at least one and one-half percent on an annualized basis below revenues as estimated by the Department of Finance or if, following the enactment of the budget bill for the 2006–07 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, the balance of the Budget Stabilization Account will decline to below one-half of the balance in the account available at the beginning of the fiscal year, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session solely for that purpose. The proclamation shall identify the nature of the proposed legislation to remedy the fiscal emergency.*

(2) *Notwithstanding any other provisions of this Constitution, if a bill or bills have not been enacted to remedy the fiscal emergency by the 45th day following the issuance of the proclamation, or the 30th day if appropriation authority is currently provided pursuant to subdivision (g) of Section 12 of Article IV, the Governor shall reduce items of appropriation as necessary to remedy the fiscal emergency. The Governor may reduce items of appropriation on an equally proportionate basis, or disproportionately, at his or her discretion.*

No reduction may be made in appropriations for debt service, appropriations necessary to comply with federal laws and regulations, or appropriations where the result of a reduction would be in violation of contracts to which the State is a party.

(3) Notwithstanding any other provision of this Constitution, the Governor's authority to reduce appropriations shall apply to any General Fund payment made with respect to any contract, collective bargaining agreement, or other entitlement under law for which liability of the State to pay arises on or after the effective date of the measure that added this paragraph.

(4) The reduction authority set forth in paragraph (2) applies until the effective date, no later than the end of that fiscal year, of a proclamation issued by the Governor declaring the end of the fiscal emergency or the budget and any legislation necessary to implement it has been enacted.

(5) If the Legislature fails to pass and send to the Governor a bill or bills to address the fiscal emergency by the 45th day following the issuance of the proclamation, the Legislature may not act on any other bill, nor may the Legislature adjourn for a joint recess, until that bill or those bills have been passed and sent to the Governor.

~~(3)~~ *(6)* A bill addressing the fiscal emergency declared pursuant to this section shall contain a statement to that effect.

(h) If, following the enactment of the budget bill for the 2006–07 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, total expenditures are expected to exceed the limit imposed by paragraph (1) of subdivision (f), for that fiscal year, the Governor shall propose to the Legislature or implement to the extent practicable by executive order measures to reduce or eliminate the excess expenditures. If after the conclusion of that fiscal year it is determined by the Director of the Department of Finance that actual expenditures for that fiscal year have exceeded the maximum amount allowable for that year, then the maximum amount of allowable expenditures as determined under subdivision (f) for the fiscal year following the fiscal year in which such determination is made shall be reduced by the amount of the excess.

SECTION 5. Section 12 of Article IV of the California Constitution is amended to read:

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) *(1)* The Governor and the Governor-elect may require a state agency, officer, or employee to furnish whatever information is deemed necessary to prepare the budget.

(2) The Director of Finance shall advise the Governor on the current status of state revenues and expenditures at least quarterly, and at the beginning of any fiscal year for which a budget bill has not been enacted.

(c) (1) The budget shall be accompanied by a budget bill itemizing recommended expenditures.

(2) The budget bill shall be introduced immediately in each house by the persons chairing the committees that consider the budget.

(3) The Legislature shall pass the budget bill by midnight on June 15 of each year.

(4) Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.

(e) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

(f) For the 2004–05 fiscal year, or any subsequent fiscal year, the Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund, for that fiscal year, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant to Section 20 of Article XVI, exceeds General Fund revenues for that fiscal year estimated as of the date of the budget bill's passage. That estimate of General Fund revenues shall be set forth in the budget bill passed by the Legislature.

(g) For the fiscal year of the effective date of the measure that added this subdivision, or any subsequent fiscal year, if the budget bill is not enacted prior to July 1, as of that date, and notwithstanding any other provision of this Constitution, amounts equal to the amounts appropriated by each of the items of appropriation in the budget act and any amendments to the budget act for the immediately preceding fiscal year are hereby appropriated for the current fiscal year, adjusted for debt service, in the same proportions, for the same purposes, from the same funding sources, and under the same conditions that apply to those items under that budget act or amendment to the budget act.

The appropriation authority set forth in this subdivision applies until the effective date of the budget act enacted for that fiscal year.

(h) (1) On and after July 1, 2006, funds may not be transferred from a special fund to the General Fund as a loan. Any funds transferred prior to that date from a special fund to the General Fund for the purpose of making a loan to the General Fund and not repaid to that special fund by July 1, 2006, shall be repaid to that special fund no later than July 1, 2021.

(2) The prohibition contained in this subdivision does not apply to loans made for the purpose of meeting the short-term cash flow needs of the State if any amount owed is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, or if repayment is to be made no later than a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

SECTION 6. Section 8 of Article XVI of the California Constitution is amended to read:

SEC. 8. (a) From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.

(b) Commencing with the 1990–91 fiscal year, the moneys to be applied by the State for the support of school districts and community college districts shall be not less than the greater of *either of* the following amounts:

(1) The amount ~~which~~ *that,* as a percentage of General Fund revenues ~~which~~ *that* may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in *the 1986–87* fiscal year ~~1986–87~~.

(2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes ~~shall~~ *are* not ~~be~~ less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. ~~This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent.~~

(3) (A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues.

(B) In addition, an amount equal to one-half of one percent times the prior year total allocations to school districts and community colleges from General Fund proceeds of taxes appropriated pursuant to Article XI11 B and allocated local proceeds of taxes, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment.

(C) This paragraph ~~(3)~~ shall be operative only in a fiscal year in which the percentage growth in California per capita personal income in a fiscal year is greater than the percentage growth in per capita General Fund revenues plus ~~one half~~ *one-half* of one percent.

(D) This paragraph is not operative in any fiscal year succeeding the fiscal year in which the measure that added this subparagraph became effective.

(c) In any fiscal year, if the amount computed pursuant to paragraph (1) of subdivision (b) exceeds the amount computed pursuant to paragraph (2) of subdivision (b) by a difference that exceeds one and one-half percent of General Fund revenues, the amount in excess of one and one-half percent of General Fund revenues shall not be considered allocations to school districts and community colleges for purposes of computing the amount of state aid pursuant to paragraph (2) ~~or 3~~ of subdivision (b) in the subsequent fiscal year.

~~(d) In any fiscal year in which school districts and community college districts are allocated funding pursuant to paragraph (3) of subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys which would have been appropriated pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of General Fund moneys which would have been appropriated pursuant to subdivision (b) had subdivision (b) not been suspended, and (2) the amount of General Fund moneys actually appropriated to school districts and community college districts in that fiscal year.~~

~~(e) The maintenance factor for school districts and community college districts determined pursuant to subdivision (d) shall be adjusted annually for changes in enrollment, and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B, until it has been allocated in full. The maintenance factor shall be allocated in a manner determined by the Legislature in each fiscal year in which the percentage growth in per capita General Fund revenues exceeds the percentage growth in California per capita personal income. The maintenance factor shall be reduced each year by the amount allocated by the Legislature in that fiscal year. The minimum maintenance factor amount to be allocated in a fiscal year shall be equal to the product of General Fund revenues from proceeds of taxes and one-half of the difference between the percentage growth in per capita General Fund revenues from proceeds of taxes and in California per capita personal income, not to exceed the total dollar amount of the maintenance factor.~~

~~(f)~~

(d) If, for any fiscal year, an amount is appropriated for the support of school districts and community college districts in excess of the minimum amount required to be appropriated for that fiscal year pursuant to subdivision (b), the excess amount so appropriated shall not be deemed an allocation to school districts and community college districts for purposes of calculating the moneys to be applied by the State for the support of those entities for any subsequent fiscal year pursuant to paragraph (2) of subdivision (b).

(e) (1) The total amount of any maintenance factors, arising pursuant to former subdivision (d) for one or more fiscal years preceding the fiscal year that commences subsequent to the effective date of the measure that added this subdivision, shall be repaid no later than July 1, 2021. The repayment of any maintenance factor pursuant to this paragraph for any fiscal year shall be divided between school districts and community college districts in the same proportion that allocations for that fiscal year that were made prior to the effective date of the measure that added this subdivision were apportioned to school districts and community college districts. The payment of a maintenance factor amount in any fiscal year shall not be deemed an allocation to school districts and community college districts for purposes of calculating the moneys to be applied by the State for the support of those entities for any subsequent fiscal year pursuant to paragraph (2) of subdivision (b).

(2) The balance of any amounts that were required by this section to be allocated to school districts and community college districts for the 2003–04 fiscal year, or any preceding fiscal year, but were not allocated as of the effective date of the measure that added this subdivision, shall be allocated no later than 15 years following that date. The total amount of augmentations allocated pursuant to this paragraph for any fiscal year shall be divided between school districts and community college districts in the same proportion that allocations for that fiscal year that were made prior to the effective date of the measure that added this subdivision were apportioned to school districts and community college districts.

(3) (A) The balance of any amounts that are required by this section to be allocated to school districts and community college districts, for the 2004–05 fiscal year, or any subsequent fiscal year, but are not allocated as of the end of that fiscal year, are continuously appropriated to the Controller from the General Fund of the State for allocation to school districts and community college districts upon the certification by the Department of Finance and the Superintendent of Public Instruction of the final data necessary to perform the calculations required pursuant to subdivision (b). That certification shall be completed within 24 months subsequent to the end of the fiscal year. The amount appropriated pursuant to this paragraph shall be

divided between school districts and community college districts in the same proportion that allocations were made during that fiscal year to school districts and community college districts.

(B) The Legislature may require, in the budget act or any other statute, that a school district or community college district use funds allocated pursuant to this paragraph for a specified purpose.

(f) (1) Payable claims for state-mandated costs incurred prior to the 2004–05 fiscal year by a school district or community college district that have not been paid prior to the 2005–06 fiscal year shall be paid no later than the 2020–21 fiscal year.

(2) Amounts allocated to a school district or community college district for a fiscal year pursuant to subdivision (b) shall first be expended by the district to pay the costs for state mandates incurred during that fiscal year.

(g) (1) For purposes of this section, "changes in enrollment" shall be measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

(2) For purposes of this section, "maintenance factor" means the difference between: (A) the amount of General Fund moneys that would have been appropriated for a fiscal year pursuant to paragraph (2) of subdivision (b) if that paragraph, rather than former paragraph (3) of that subdivision, had been operative or, as applicable, the amount of General Fund moneys that would have been appropriated for a fiscal year pursuant to subdivision (b) had subdivision (b) not been suspended pursuant to a statute enacted prior to January 1, 2005, and (B) the amount of General Fund moneys actually appropriated to school districts and community college districts for that fiscal year.

(h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that the urgency statute may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

SECTION 7. Section 6 of Article XIX of the California Constitution is amended to read:

SEC. 6. ~~The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:~~

~~(a) That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.~~

~~(b) That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:~~

~~(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.~~

~~(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.~~

~~(c) Nothing in this section prohibits the Legislature from authorizing~~ *Nothing in subdivision (h) of Section 12 of Article IV prohibits the Legislature from authorizing*, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized under this article. Any loan authorized as described by this ~~subdivision~~ *section* shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from which it was borrowed, not later than four years after the date on which the loan was made.

SECTION 8. Section 1 of Article XIX A of the California Constitution is repealed.

~~SECTION 1. The funds in the Public Transportation Account in the State Transportation Fund, or any successor to that account, may be loaned to the General Fund only if one of the following conditions is imposed:~~

~~(a) That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.~~

~~(b) That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:~~

~~(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.~~

~~(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.~~

SECTION 9. Section 1 of Article XIX B of the California Constitution is amended to read:

SEC. 1. (a) For the 2003–04 fiscal year and each fiscal year thereafter, all moneys that are collected during the fiscal year from taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, and that are deposited in the General Fund of the State pursuant to that law, shall be transferred to the Transportation Investment Fund, which is hereby created in the State Treasury *as a special fund*.

(b) (1) For the 2003–04 to 2007–08 fiscal years, inclusive, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, in accordance with Section 7104 of the Revenue and Taxation Code as that section read on ~~the operative date of this article~~ *March 6, 2002*.

(2) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated solely for the following purposes:

(A) Public transit and mass transportation.

(B) Transportation capital improvement projects, subject to the laws governing the State Transportation Improvement Program, or any successor to that program.

(C) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county.

(D) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county.

(c) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, as follows:

~~(A)~~

(1) Twenty percent of the moneys for the purposes set forth in subparagraph (A) of paragraph (2) of subdivision (b).

~~(B)~~

(2) Forty percent of the moneys for the purposes set forth in subparagraph (B) of paragraph (2) of subdivision (b).

~~(C)~~

(3) Twenty percent of the moneys for the purposes set forth in subparagraph (C) of paragraph (2) of subdivision (b).

~~(D)~~

(4) Twenty percent of the moneys for the purpose set forth in subparagraph (D) of paragraph (2) of subdivision (b).

(d) *(1)* The transfer of revenues from the General Fund of the State to the Transportation Investment Fund pursuant to subdivision (a) may be suspended, in whole or in part, for ~~a~~ *any fiscal year preceding the 2007–08* fiscal year if both of the following conditions are met:

~~(1)~~

(A) The Governor has issued a proclamation that declares that the transfer of revenues pursuant to subdivision (a) will result in a significant negative fiscal impact on the range of functions of government funded by the General Fund of the State.

~~(2)~~

(B) The Legislature enacts by statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, a suspension for that fiscal year of the transfer of revenues pursuant to subdivision (a), provided that the bill does not contain any other unrelated provision.

(2) (A) The total amount, as of July 1, 2007, of revenues that were not transferred from the General Fund of the State to the Transportation Investment Fund because of a suspension pursuant to this subdivision shall be repaid to the Transportation Investment Fund no later than June 30, 2022. Until that total amount has been repaid, the amount of that repayment to be made in each fiscal year shall not be less than one-fifteenth of the total amount due.

(B) The Legislature may provide by statute for the issuance of bonds by the State or local agencies, as applicable, that are secured by the payments required by this paragraph. Proceeds of the sale of the bonds shall be applied for purposes consistent with this article, and for costs associated with the issuance and sale of the bonds.

(e) The Legislature may enact a statute that modifies the percentage shares set forth in subdivision (c) by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated provision and that the moneys described in subdivision (a) are expended solely for the purposes set forth in paragraph (2) of subdivision (b).

SECTION 10. Section 6 of Article XIII B of the California Constitution is amended to read:

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law. *In the event payment of a mandate is suspended in whole or in part by the Governor pursuant to paragraph (2) of subdivision (g) of Section 10 of Article IV, the operation of the mandate is suspended for the fiscal year in which payment is suspended.*

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year ~~may~~ *shall* be paid over a term of *not more than 5* years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

SECTION 11. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to the appropriation, allocation, classification, and expenditure of state revenues for support of state government and education shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SECTION 12. Severability

If any provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable.

PROPOSITION 77

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

REDISTRICTING REFORM: THE VOTER EMPOWERMENT ACT

SECTION 1. Findings and Declarations of Purpose

The People of the State of California find and declare that:

(a) Our Legislature should be responsive to the demands of the citizens of the State of California, and not the self-interest of individual legislators or the partisan interests of political parties.

(b) Self-interest and partisan gerrymandering have resulted in uncompetitive districts, ideological polarization in our institutions of representative democracy, and a disconnect between the interests of the People of California and their elected representatives.

(c) The redistricting plans adopted by the California Legislature in 2001 serve incumbents, not the People, are repugnant to the People, and are in direct opposition to the People's interest in fair and competitive elections. They should not be used again.

(d) We demand that our representative system of government be fair to all, open to public scrutiny, free of conflicts of interest, and dedicated to the principle that government derives its power from the consent of the governed. Therefore, the People of the State of California hereby adopt the "Redistricting Reform: The Voter Empowerment Act."

SECTION 2. Fair Redistricting

Article XXI of the California Constitution is amended to read:

SECTION 1. *(a) Except as provided in subdivision (b), in the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, a panel of Special Masters composed of retired judges shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in accordance with the standards and provisions of this article.*

(b) Within 20 days following the effective date of this section, the Legislature shall appoint, pursuant to the provisions of paragraph (2) of subdivision (c), a panel of Special Masters to adopt a plan of redistricting adjusting the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts for use in the next set of statewide primary and general elections and until the next adjustment of boundary lines is required pursuant to subdivisions (a) or (i). The panel shall establish a schedule and deadlines to ensure timely adoption of the plan. Except for paragraph (1) of subdivision (c), all provisions of this article shall apply to the adoption of the plan required by this subdivision.

(c) (1) Except as provided in subdivision (b), on or before January 15 of the year following the year in which the national census

is taken, the Legislature shall appoint, pursuant to the provisions of paragraph (2) of subdivision (c), a panel of Special Masters composed of retired judges to adopt a plan of redistricting adjusting the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts pursuant to this article.

(2) (A) In sufficient time to allow the appointment of the Special Masters, the Judicial Council shall nominate by lot 24 retired judges willing to serve as Special Masters. Only retired California state or federal judges, who have never held elected partisan public office or political party office, have not changed their party affiliation, as declared on their voter registration affidavit, since their initial appointment or election to judicial office, and have not received income during the past 12 months from the Legislature, a committee thereof, the United States Congress, a committee thereof, a political party, or a partisan candidate or committee controlled by such candidate, are qualified to serve as Special Master. Not more than 12 of the 24 retired judges may be of a single party affiliation, and the two largest political parties in California shall be equally represented among the nominated retired judges.

(B) A retired judge selected to serve as a Special Master shall also pledge, in writing, that he or she will not run for election in the Senatorial, Assembly, Congressional, or Board of Equalization districts adjusted by him or her pursuant to this article nor accept, for at least five years from the date of appointment as a Special Master, California state public employment or public office, other than judicial employment or judicial office or a teaching position.

(C) From the pool of retired judges nominated by the Judicial Council, the Speaker of the Assembly, the Minority Leader of the Assembly, the President pro Tempore of the Senate, and the Minority Leader of the Senate shall each nominate, no later than five days before the deadline for appointment of the panel of Special Masters, three retired judges, who are not registered members of the same political party as that of the legislator making the nomination. No retired judge may be nominated by more than one legislator.

(D) If, for any reason, any of the aforementioned legislative leadership fails to nominate the requisite number of retired judges within the time period specified herein, the Chief Clerk of the Assembly shall immediately draw, by lot, that legislator's remaining nominees in accordance with the requirements of subparagraph (C) of paragraph (2) of subdivision (c).

(E) No later than three days before the deadline for appointment of the panel of Special Masters, each legislator authorized to nominate a retired judge shall also be entitled to exercise a single peremptory challenge striking the name of any nominee of any other legislator.

(F) From the list of remaining nominees selected by said legislative leadership, the Chief Clerk of the Assembly shall then draw, by lot, three persons to serve as Special Masters. If the drawing fails to produce at least one Special Master from each of the two largest political parties, the drawing shall be conducted again until this requirement is met. If the drawing is unable to produce at least one Special Master from each of the two largest political parties, the drawing for the Special Master from the political party not represented from the list of remaining nominees shall be made from the original pool of 24 retired judges nominated by the Judicial Council, except that no retired judge whose name was struck pursuant to subparagraph (E) of paragraph (2) of subdivision (c) may be appointed. In the event of a vacancy in the panel of Special Masters, the Chief Clerk shall immediately thereafter draw, by lot, from the list of remaining nominees selected by said legislative leadership, or the original pool of 24 retired judges, if necessary, except for those whose names were struck, a replacement who satisfies the composition requirements for the panel under this subdivision.

(d) Each Special Master shall be compensated at the same rate for each day engaged in official duties and reimbursed for actual and necessary expenses, including travel expenses, in the same manner as a member of the California Citizens Compensation Commission pursuant to subdivision (j) of Section 8 of Article III. The Special Masters' term of office shall expire upon approval or rejection of a plan pursuant to subdivision (h).

(e) Each Special Master shall be subject to the same restrictions on gifts as imposed on a retired judge of the superior court serving in the assigned judges program, and shall file a statement of economic interest, or any successor document, to the same extent and in the same manner as such a retired judge.

(f) (1) Public notice shall be given of all meetings of the Special Masters, and the Special Masters shall be deemed a state body subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), or any successor act, as amended from time to time; provided that all meetings and sessions of the Special Masters shall be recorded. The Special Masters shall establish procedures that restrict ex parte communications from members of the public and the Legislature concerning the merits of any redistricting plan.

(2) The panel of Special Masters shall establish and publish a schedule to receive and consider proposed redistricting plans and public comment from any member of the Legislature or public. The panel of Special Masters shall hold at least three public hearings throughout the state to consider redistricting plans. At least one such hearing shall be held after the Special Masters have submitted their proposed redistricting plan pursuant to paragraph (3) of subdivision (f), but before adoption of the final plan.

(3) Before the adoption of a final redistricting plan, the Special Masters shall submit their plan to the Legislature for an opportunity to comment within the time set by the Special Masters. The Special Masters shall address in writing each change to their plan that is recommended by the Legislature and incorporated into the plan.

(g) The final redistricting plan shall be approved by a single resolution adopted unanimously by the Special Masters and shall become effective upon its filing with the Secretary of State for use at the next statewide primary and general elections, and, if adopted by initiative pursuant to subdivision (h), for succeeding elections until the next adjustment of boundaries is required pursuant to this article.

(h) The Secretary of State shall submit the final redistricting plan as if it were proposed as an initiative statute under Section 8 of Article II at the same next general election provided for under subdivision (g) for approval or rejection by the voters for use in succeeding elections until the next adjustment of boundaries is required. The ballot title shall read: "Shall the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts adopted by Special Masters as required by Article XXI of the California Constitution, and used for this election, be used until the next constitutionally required adjustment of the boundaries?"

(i) If the redistricting plan is approved by the voters pursuant to subdivision (h), it shall be used in succeeding elections until the next adjustment of boundaries is required. If the plan is rejected by the voters pursuant to subdivision (h), a new panel of Special Masters shall be appointed within 90 days in the manner provided in paragraph (2) of subdivision (c), for the purpose of proposing a new plan for the next statewide primary and general elections pursuant to this article. Any officials elected under a final redistricting plan shall serve out their term of office notwithstanding the voters' disapproval of the plan for use in succeeding primary and general elections.

(j) The Legislature shall make such appropriations from the Legislature's operating budget, as limited by Section 7.5 of Article IV, as necessary to provide the panel of Special Masters with equipment, office space, and necessary personnel, including counsel and independent experts in the field of redistricting and computer technology, to assist them in their work. The Legislative Analyst shall determine the maximum amount of the appropriation, based on one-half the amount expended by the Legislature in creating plans in 2001, adjusted by the California Consumer Price Index. For purposes of the plan of redistricting under subdivision (b) only, there is hereby appropriated to the panel of Special Masters from the General Fund of the State during the fiscal year in which the panel performs its responsibilities a sum equal to one-half the amount expended by the Legislature in creating plans in 2001. The expenditure of funds under this appropriation shall be subject to the normal administrative review given to other state appropriations. For purposes of all plans of redistricting under subdivision (a), until appropriations are made, the Legislative Analyst's Office, or any successor thereto, shall furnish, from existing resources, staff and services to the panel as needed for the performance of its duties.

(k) Except for judicial decrees, the provisions of this article are the exclusive means of adjusting the boundary lines of the districts specified herein.

Section 2. (a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district. Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(b) The population of all districts of a particular type shall be as nearly equal as practicable. For congressional districts, the maximum population deviation between districts shall not exceed federal constitutional standards. For state legislative and Board of Equalization districts, the maximum population deviation between districts of the same type shall not exceed one percent or any stricter standard required by federal law.

(c) Districts shall comply with any additional requirements of the United States Constitution and any applicable federal statute, including the federal Voting Rights Act.

(d) Each Board of Equalization district shall be comprised of 10 adjacent Senate districts and each Senate district shall be comprised of two adjacent Assembly districts.

(e) Every district shall be contiguous.

(f) District boundaries shall conform to the geographic boundaries of a county, city, or city and county to the greatest extent practicable. In this regard, a redistricting plan shall comply with these criteria in the following order of importance: (1) create the most whole counties possible, (2) create the fewest county fragments possible, (3) create the most whole cities possible, and (4) create the fewest city fragments possible, except as necessary to comply with the requirements of the preceding subdivisions of this section.

(g) Every district shall be as compact as practicable except to the extent necessary to comply with the requirements of the preceding subdivisions of this section. With regard to compactness, to the extent practicable a contiguous area of population shall not be bypassed to incorporate an area of population more distant.

(h) No census block shall be fragmented unless required to satisfy the requirements of the United States Constitution.

(i) No consideration shall be given as to the potential effects on incumbents or political parties. No data regarding the residence of an incumbent or of any other candidate or the party affiliation or voting history of electors may be used in the preparation of plans, except as required by federal law.

Section 3. Any action or proceeding alleging that a plan adopted by the Special Masters does not conform with the requirements of this article must be filed within 45 days of the filing of the plan with the Secretary of State or such action or proceeding is forever barred. Judicial review of the conformity of any plan with the requirements of this article may be pursuant to a petition for extraordinary relief. If any court finds a plan to be in violation of this article, it may order that a new plan be adopted by a panel of Special Masters pursuant to this article. A court may order any remedy necessary to effectuate this article.

~~In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:~~

~~(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single/member district.~~

~~(b) The population of all districts of a particular type shall be reasonably equal.~~

~~(c) Every district shall be contiguous.~~

~~(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.~~

~~(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.~~

SECTION 3. Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid, including, but not limited to, subdivision (b) of Section 1 of Article XXI, that invalidity shall not affect other provisions or applications which can reasonably be given effect in the absence of the invalid provision or application.

SECTION 4. Conflicting Ballot Measures

(a) In the event that this measure and another measure or measures relating to the redistricting of Senatorial, Assembly, Congressional, or Board of Equalization districts is approved by a majority of voters at the same election, and this measure receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and said other measure or measures shall be rendered void and without any legal effect. If this measure is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.

(b) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

PROPOSITION 78

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. FINDINGS AND DECLARATION OF PURPOSE

The people of the State of California do hereby find and declare that:

(a) Prescription drugs are an integral part to managing acute and chronic illness improving quality of life; and

(b) Prescription drugs are a convenient, cost-effective alternative to more costly medical interventions; and

(c) Increasing the affordability and access of prescription medicines will significantly improve health care quality and lower overall health care costs.

SEC. 2. CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM (CAL RX)

Division 112 (commencing with Section 130600) is added to the Health and Safety Code, to read:

DIVISION 112. CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM (CAL RX)

CHAPTER 1. GENERAL PROVISIONS

130600. This division shall be known, and may be cited, as the California State Pharmacy Assistance Program or Cal Rx.

130601. For the purposes of this division, the following definitions shall apply:

(a) "Benchmark price" means the price for an individual drug or aggregate price for a group of drugs offered by a manufacturer equal to the lowest commercial price for the individual drug or group of drugs.

(b) "Cal Rx" means the California State Pharmacy Assistance Program.

(c) "Department" means the State Department of Health Services.

(d) "Fund" means the California State Pharmacy Assistance Program Fund.

(e) "Inpatient" means a person who has been admitted to a hospital for observation, diagnosis, or treatment and who is expected to remain overnight or longer.

(f) (1) "Lowest commercial price" means the lowest purchase price for an individual drug, including all discounts, rebates, or free goods, available to any wholesale or retail commercial class of trade in California.

(2) Lowest commercial price excludes purchases by government entities, purchases pursuant to Section 340B of the federal Public Health Services Act (42 U.S.C. Sec. 256b), or nominal prices as defined in federal Medicaid drug rebate agreements.

(3) A purchase price provided to an acute care hospital or acute care hospital pharmacy may be excluded if the prescription drug is used exclusively for an inpatient of the hospital.

(4) Wholesale or retail commercial class of trade includes distributors, retail pharmacies, pharmacy benefit managers, health maintenance organizations, or any entities that directly or indirectly sell prescription drugs to consumers through licensed retail pharmacies, physician offices, or clinics.

(g) "Manufacturer" means a drug manufacturer as defined in Section 4033 of the Business and Professions Code.

(h) "Manufacturer's rebate" means the rebate for an individual drug or aggregate rebate for a group of drugs necessary to make the price for the drug ingredients equal to or less than the applicable benchmark price.

(i) "Prescription drug" means any drug that bears the legend "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(j) "Private discount drug program" means a prescription drug discount card or manufacturer patient assistance program that provides discounted or free drugs to eligible individuals. For the purposes of this division, a private discount drug program is not considered insurance or a third-party payer program.

(k) "Recipient" means a resident that has completed an application and has been determined eligible for Cal Rx.

(l) "Resident" means a California resident pursuant to Section 17014 of the Revenue and Taxation Code.

(m) "Third-party vendor" means a public or private entity with whom the department contracts pursuant to subdivision (b) of Section 130602, which may include a pharmacy benefit administration or pharmacy benefit management company.

130602. (a) There is hereby established the California State Pharmacy Assistance Program or Cal Rx.

(b) The department shall provide oversight of Cal Rx. To implement and administer Cal Rx, the department may contract with a third-party vendor or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary.

(c) Any resident may enroll in Cal Rx if determined eligible pursuant to Section 130605.

CHAPTER 2. ELIGIBILITY AND APPLICATION PROCESS

130605. (a) To be eligible for Cal Rx, an individual shall meet all of the following requirements at the time of application and reapplication for the program:

(1) Be a resident.

(2) Have family income, as reported pursuant to Section 130606, that does not exceed 300 percent of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. Sec. 9902), as amended.

(3) Not have outpatient prescription drug coverage paid for in whole or in part by any of the following:

(A) A third-party payer.

(B) The Medi-Cal program.

(C) The children's health insurance program.

(D) The disability medical assistance program.

(E) Another health plan or pharmacy assistance program that uses state or federal funds to pay part or all of the cost of the individual's outpatient prescription drugs. Notwithstanding any other provision of this division to the contrary, an individual enrolled in Medicare may participate in this program, to the extent allowed by federal law, for prescription drugs not covered by Medicare.

(4) Not have had outpatient prescription drug coverage specified in paragraph (3) during any of the three months preceding the month in which the application or reapplication for Cal Rx is made, unless any of the following applies:

(A) The third-party payer that paid all or part of the coverage filed for bankruptcy under the federal bankruptcy laws.

(B) The individual is no longer eligible for coverage provided through a retirement plan subject to protection under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001), as amended.

(C) The individual is no longer eligible for the Medi-Cal program, children's health insurance program, or disability medical assistance program.

(b) Application and an annual reapplication for Cal Rx shall be made pursuant to subdivision (d) of Section 130606. An applicant, or a guardian or custodian of an applicant, may apply or reapply on behalf of the applicant and the applicant's spouse and children.

130606. (a) The department or third-party vendor shall develop an application and reapplication form for the determination of a resident's eligibility for Cal Rx.

(b) The application, at a minimum, shall do all of the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application.

(2) Require that the applicant, or the applicant's guardian or custodian, attest that the information provided in the application is accurate to the best knowledge and belief of the applicant or the applicant's guardian or custodian.

(3) Include a statement printed in bold letters informing the applicant that knowingly making a false statement is punishable under penalty of perjury.

(4) Specify that the application and annual reapplication fee due upon submission of the applicable form is fifteen dollars ($15).

(c) In assessing the income requirement for Cal Rx eligibility, the department shall use the income information reported on the application and not require additional documentation.

(d) Application and annual reapplication may be made at any pharmacy, physician office, or clinic participating in Cal Rx, through a Web site or call center staffed by trained operators approved by the department, or through the third-party vendor. A pharmacy, physician office, clinic, or third-party vendor completing the application shall keep the application fee as reimbursement for its processing costs. If it is determined that the applicant is already enrolled in Cal Rx, the fee shall be returned to the applicant and the applicant shall be informed of his or her current status as a recipient.

(e) The department or third-party vendor shall utilize a secure electronic application process that can be used by a pharmacy, physician office, or clinic, by a Web site, by a call center staffed by trained operators, or through the third-party vendor to enroll applicants in Cal Rx.

(f) During normal hours, the department or third-party vendor shall make a determination of eligibility within four hours of receipt by Cal Rx of a completed application. The department or third-party vendor shall mail the recipient an identification card no later than four days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department or third-party vendor may issue a recipient identification number for eligible applicants to the pharmacy for immediate access to Cal Rx.

130607. (a) The department or third-party vendor shall attempt to execute agreements with private discount drug programs to provide a single point of entry for eligibility determination and claims processing for drugs available in those private discount drug programs.

(b) (1) Private discount drug programs may require an applicant to provide additional information, beyond that required by Cal Rx, to determine the applicant's eligibility for discount drug programs.

(2) An applicant shall not be, under any circumstances, required to participate in, or to disclose information that would determine the applicant's eligibility to participate in, private discount drug programs in order to participate in Cal Rx.

(3) Notwithstanding paragraph (2), an applicant may voluntarily disclose or provide information that may be necessary to determine eligibility for participation in a private drug discount program.

(c) For those drugs available pursuant to subdivision (a), the department or third-party vendor shall develop a system that provides

a recipient with the best prescription drug discounts that are available to them through Cal Rx or through private discount drug programs.

(d) The recipient identification card issued pursuant to subdivision (g) of Section 130606 shall serve as a single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a uniform prescription drug card pursuant to Section 1363.03.

CHAPTER 3. ADMINISTRATION AND SCOPE

130615. (a) To the extent that funds are available, the department shall conduct outreach programs to inform residents about Cal Rx and private drug discount programs available through the single point of entry as specified in subdivisions (a) and (d) of Section 130607. No outreach material shall contain the name or likeness of a drug. The name of the organization sponsoring the material pursuant to subdivision (b) may appear on the material once and in a font no larger than 10 point.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about Cal Rx. Neither Section 11005 of the Government Code, nor any other law requiring approval by a state officer of a gift, bequest, or donation shall apply to these gifts, bequests, or donations. For purposes of this section, outreach services may include, but shall not be limited to, coordinating and implementing outreach efforts and plans. Outreach materials may include, but shall not be limited to, brochures, pamphlets, fliers, posters, advertisements, and other promotional items.

(c) An advertisement provided as a gift, bequest, or donation pursuant to this section shall be exempt from Article 5 (commencing with Section 11080) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

130616. (a) Any pharmacy licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code may participate in Cal Rx.

(b) Any manufacturer, as defined in subdivision (g) of Section 130601, may participate in Cal Rx.

130617. (a) This division shall apply only to prescription drugs dispensed to noninpatient recipients.

(b) The amount a recipient pays for a drug within Cal Rx shall be equal to the pharmacy contract rate pursuant to subdivision (c), plus a dispensing fee that shall be negotiated as part of the rate pursuant to subdivision (c), less the applicable manufacturer's rebate.

(c) The department or third-party vendor may contract with participating pharmacies for a rate other than the pharmacist's usual and customary rate. However, the department must approve the contracted rate of a third-party vendor.

(d) The department or third-party vendor shall provide a claims processing system that complies with all of the following requirements:

(1) Charges a price that meets the requirements of subdivision (b).

(2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.

(3) Provides a single point of entry for access to private discount drug programs pursuant to Section 130607.

(4) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r–8(g)).

(e) The department or third-party vendor shall pay a participating pharmacy the discount provided to recipients pursuant to subdivision (b) by a date that is not later than two weeks after the claim is received.

(f) The department or third-party vendor shall develop a program to prevent the occurrence of fraud in Cal Rx.

(g) The department or third-party vendor shall develop a mechanism for recipients to report problems or complaints regarding Cal Rx.

130618. (a) In order to secure the discount required pursuant to subdivisions (b) and (c) of Section 130617, the department or third-party vendor shall attempt to negotiate drug rebate agreements for Cal Rx with drug manufacturers.

(b) Each drug rebate agreement shall do all of the following:

(1) Specify which of the manufacturer's drugs are included in the agreement.

(2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.

(3) Require the manufacturer to make a rebate payment to the department for each drug specified under paragraph (1) dispensed to a recipient.

(4) Require the rebate payment for a drug to be equal to the amount determined by multiplying the applicable per unit rebate by the number of units dispensed.

(5) Define a unit, for purposes of the agreement, in compliance with the standards set by the National Council of Prescription Drug Programs.

(6) Require the manufacturer to make the rebate payments to the department on at least a quarterly basis.

(7) Require the manufacturer to provide, upon the request of the department, documentation to validate that the per unit rebate provided complies with paragraph (4).

(8) Permit a manufacturer to audit claims for the drugs the manufacturer provides under Cal Rx. Claims information provided to manufacturers shall comply with all federal and state privacy laws that protect a recipient's health information.

(c) To obtain the most favorable discounts, the department may limit the number of drugs available within Cal Rx.

(d) The entire amount of the drug rebates negotiated pursuant to this section shall go to reducing the cost to Cal Rx recipients of purchasing drugs. The Legislature shall annually appropriate an amount to cover the state's share of the discount provided by this section.

(e) The department or third-party vendor may collect prospective rebates from manufacturers for payment to pharmacies. The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to this section.

(f) Drug rebate contracts negotiated by the third-party vendor shall be subject to review by the department. The department may cancel a contract that it finds not in the best interests of the state or Cal Rx recipients.

(g) The third-party vendor may directly collect rebates from manufacturers in order to facilitate the payment to pharmacies pursuant to subdivision (e) of Section 130617. The department shall develop a system to prevent diversion of funds collected by the third-party vendor.

130619. (a) The department or third-party vendor shall generate a monthly report that, at a minimum, provides all of the following:

(1) Drug utilization information.

(2) Amounts paid to pharmacies.

(3) Amounts of rebates collected from manufacturers.

(4) A summary of the problems or complaints reported regarding Cal Rx.

(b) Information provided in paragraphs (1), (2), and (3) of subdivision (a) shall be at the national drug code level.

130620. (a) The department or third-party vendor shall deposit all payments received pursuant to Section 130618 into the California State Pharmacy Assistance Program Fund, which is hereby established in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the fund are hereby appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to Section 130617 and for defraying the costs of administering Cal Rx. Notwithstanding any other provision of law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund.

130621. The department may hire any staff needed for the implementation and oversight of Cal Rx.

130622. The department shall seek and obtain confirmation from the federal Centers for Medicare and Medicaid Services that Cal Rx complies with the requirements for a state pharmaceutical assistance program pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r–8) and that discounts provided under the program are exempt from Medicaid best price requirements.

130623. (a) Contracts and change orders entered into pursuant to this division and any project or systems development notice shall be exempt from all of the following:

(1) The competitive bidding requirements of State Administrative Manual Management Memo 03-10.

(2) Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(3) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

(b) Change orders entered into pursuant to this division shall not require a contract amendment.

130624. The department may terminate Cal Rx if the department makes any one of the following determinations:

(a) That there are insufficient discounts to participants to make Cal Rx viable.

(b) That there are an insufficient number of applicants for Cal Rx.

(c) That the department is unable to find a responsible third-party vendor to administer Cal Rx.

130625. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this division in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action.

SEC. 3. GENERAL PROVISIONS

(a) Conflicting Measures:

(1) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure or measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(2) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

(b) Severability: The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) Amendment: The provisions of this act may be amended by a statute that is passed by a vote of two-thirds of the membership of each house of the Legislature and signed by the Governor. All amendments to this act shall be to further the act and shall be consistent with its purposes.

PROPOSITION 79

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CHEAPER PRESCRIPTION DRUGS FOR CALIFORNIA ACT (CAL RX PLUS)

SECTION 1. Division 112 (commencing with Section 130500) is added to the Health and Safety Code, to read:

DIVISION 112. CHEAPER PRESCRIPTION DRUGS FOR CALIFORNIA ACT (CAL RX PLUS)

CHAPTER 1. GENERAL PROVISIONS

130500. This division shall be known, and may be cited, as the Cheaper Prescription Drugs for California Program or Cal Rx Plus.

130501. The Cheaper Prescription Drugs for California Program, or Cal Rx Plus, is established to reduce prescription drug prices and to improve the quality of health care for residents of the state. The program is administered by the State Department of Health Services to use manufacturer rebates and pharmacy discounts to reduce prescription drug prices for Californians.

130502. The people of California find that affordability is critical in providing access to prescription drugs for California residents. This program is enacted by the people to enable the state to take steps to make prescription drugs more affordable for qualified California residents, thereby increasing the overall health of California residents, promoting healthy communities, and protecting the public health and welfare. It is not the intention of the state to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified California residents under this program.

130503. Cal Rx Plus shall be available to Californians facing high prescription drug costs to provide lower prescription drug prices. To the extent permitted by federal law, Cal Rx Plus shall also be available to small businesses and other entities, as defined, that provide health coverage for Californians.

130504. For purposes of this division, the following definitions apply:

(a) "Department" means the State Department of Health Services.

(b) "Fund" means the Cal Rx Plus Program Fund.

(c) "Program" means the Cheaper Prescription Drugs for California Program or Cal Rx Plus.

(d) (1) "Qualified Californian" means a resident of California whose total unreimbursed medical expenses equal 5 percent or more of family income.

(2) "Qualified Californian" also means an individual enrolled in Medicare who may participate in this program, to the extent allowed by federal law, for prescription drugs not covered by Medicare.

(3) "Qualified Californian" also means a resident of California who has a family income equal to or less than 400 percent of the federal poverty guidelines and who shall not have outpatient prescription drug coverage paid for in whole or in part by the Medi-Cal program or the Healthy Families Program.

(4) For purposes of this subdivision, the cost of drugs provided under this division is considered an expense incurred by the family for eligibility determination purposes.

(e) "Prescription drug" means any drug that bears the legend "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

CHAPTER 2. PRESCRIPTION DRUG DISCOUNTS

130510. (a) The amount a Cal Rx Plus participant pays for a drug through the program shall be equal to the participating provider's usual and customary charge or the pharmacy contract rate pursuant to subdivision (c), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.

(b) In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug's manufacturer and the state's share of the discount.

(c) The department may contract with participating pharmacies for a rate other than the pharmacies' usual and customary rate.

130511. (a) The department shall negotiate drug rebate agreements with drug manufacturers to provide for discounts for prescription drugs purchased through Cal Rx Plus.

(b) Consistent with federal law, the department shall seek to contract for drug rebates that result in a net price comparable to or lower than the Medicaid best price for drugs covered by the program. The department shall also seek to contract a net price comparable to or lower than the price for prescription drugs provided to the federal government.

(c) To obtain the most favorable discounts, the department may limit the number of drugs available through the program.

(d) No less than 95 percent of the drug rebates negotiated pursuant to this section shall be used to reduce the cost of drugs purchased by participants in the program.

(e) (1) Any pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code may participate in the program.

(2) Any drug manufacturer may participate in the program.

130512. (a) Subject to this section, the department may not enter into a new contract or extend an existing contract with a drug manufacturer for the Medi-Cal program if the drug manufacturer will not provide Cal Rx Plus a rate comparable to or lower than the Medicaid best price. This provision shall not apply to a drug for which there is no therapeutic equivalent.

(b) To the extent permitted by federal law, the department may require prior authorization in the Medi-Cal program for any drug of a manufacturer that fails to agree to a price comparable to or lower than the Medi-Cal best price for prescription drugs purchased under this division.

(c) If a contract with a manufacturer is precluded under subdivision (a) or if prior authorization is required for a drug pursuant to this section, in no event shall a Medi-Cal beneficiary be denied the continued use of a drug that is part of a prescribed therapy until that drug is no longer prescribed for that beneficiary's therapy. The State Department of Health Services shall approve or deny requests for prior authorization necessitated by this section as required by state or federal law.

(d) This section shall be implemented consistent with federal law.

130513. The names of manufacturers that do and do not enter into rebate agreements with the department pursuant to this division shall be public information and shall be released to the public.

130514. (a) Each drug rebate agreement shall do all of the following:

(1) Specify which of the manufacturer's drugs are included in the agreement.

(2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.

(3) Require the manufacturer to make a rebate payment to the department for each drug specified under paragraph (1) dispensed to a participant.

(4) Require the manufacturer to make the rebate payments to the department on at least a quarterly basis.

(5) Require the manufacturer to provide, upon the request of the department, documentation to validate the rebate.

(6) Permit a manufacturer to audit claims for the drugs the manufacturer provides under Cal Rx Plus. Claims information provided to manufacturers shall comply with all federal and state privacy laws that protect a participant's health information.

(b) The department may collect prospective rebates from manufacturers for payment to pharmacies. The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to this section.

(c) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments.

(2) For state rebate payments, manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(d) Interest pursuant to subdivision (c) shall begin accruing 38 calendar days from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

130515. (a) The department shall generate a monthly report that, at a minimum, provides all of the following:

(1) Drug utilization information.

(2) Amounts paid to pharmacies.

(3) Amounts of rebates collected from manufacturers.

(4) A summary of the problems or complaints reported regarding Cal Rx Plus.

(b) Information provided in paragraphs (1), (2), and (3) of subdivision (a) shall be at the national drug code level.

130516. (a) The department shall provide a claims processing system that complies with all of the following requirements:

(1) Charges a price that meets the requirements of this division.

(2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.

(3) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in federal law.

(b) The department shall pay a participating pharmacy the discount provided to participants pursuant to this division by a date that is not later than two weeks after the claim is received.

(c) The department shall develop a mechanism for Cal Rx Plus participants to report problems or complaints regarding Cal Rx Plus.

CHAPTER 3. CAL RX PLUS APPLICATION, ENROLLMENT, AND OUTREACH

130520. (a) The department shall develop an application and reapplication form for the determination of a resident's eligibility for Cal Rx Plus. An applicant, or a guardian or custodian of an applicant, may apply or reapply on behalf of the applicant and the applicant's spouse and children.

(b) The application, at a minimum, shall do all of the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application.

(2) Require that the applicant, or the applicant's guardian or custodian, attest that the information provided in the application is accurate to the best knowledge and belief of the applicant or the applicant's guardian or custodian.

(3) Specify that the application and annual reapplication fee due upon submission of the applicable form is ten dollars ($10).

(c) In assessing the income requirement for Cal Rx Plus eligibility, the department shall use the income information reported on the application and not require additional documentation.

(d) Application and annual reapplication may be made at any pharmacy, physician office, or clinic participating in Cal Rx Plus, or through a Web site or call center staffed by trained operators approved by the department. A pharmacy, physician office, clinic, or nonprofit community organization completing the application shall keep the application fee as reimbursement for its processing costs. If it is determined that the applicant is already enrolled in Cal Rx Plus, the fee shall be returned to the applicant and the applicant shall be informed of his or her current status as a participant.

(e) The department shall utilize a secure electronic application process that can be used by a pharmacy, physician office, or clinic, by a Web site, by a call center staffed by trained operators, by a nonprofit community organization, or through the third-party vendor to enroll applicants in Cal Rx Plus.

(f) During normal hours, the department shall make a determination of eligibility within four hours of receipt by Cal Rx Plus of a completed application. The department shall mail the participant an identification card no later than four days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department may issue a participant identification number for eligible applicants to the pharmacy for immediate access to Cal Rx Plus.

(h) A Cal Rx Plus participant who has been determined to be eligible shall be enrolled for 12 months or until the participant notifies the department of a desire to end enrollment.

(i) The department shall notify a participant 30 days prior to the termination of enrollment. A Cal Rx Plus participant shall remain enrolled until the participant notifies the department that the participant no longer meets the enrollment criteria.

130521. (a) The department shall conduct an outreach program to inform California residents of their opportunity to participate in the Cheaper Prescription Drugs for California Program. The department shall coordinate outreach activities with the California Department of Aging and other state agencies, local agencies, and nonprofit organizations that serve residents who may qualify for the program. No outreach material shall contain the name or likeness of a drug.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about Cal Rx Plus. The name of the organization sponsoring the material pursuant to this subdivision shall in no way appear on the material but shall be reported to the public and the Legislature as otherwise provided by law.

130522. (a) A drug dispensed pursuant to prescription, including a drug dispensed without charge to the consumer, must be accompanied by Cal Rx Plus participation information in a manner approved by the department and as permitted by law.

(b) The information shall include advice to consult a health care provider or pharmacist about access to drugs at lower prices.

(c) The requirements of this section may be met by the distribution of a separate writing that is approved by or produced and distributed by the department.

CHAPTER 4. PHARMACEUTICAL MANUFACTURER PATIENT ASSISTANCE PROGRAMS

130530. (a) The department shall execute agreements with drug manufacturer and other private patient assistance programs to provide a single point of entry for eligibility determination and claims processing for drugs available through those programs.

(b) The department shall develop a system to provide a participant under this division with the best discounts on prescription drugs that

are available to the participant through this program or through a drug manufacturer or other private patient assistance program.

(c) (1) The department may require an applicant to provide additional information to determine the applicant's eligibility for other discount card and patient assistance programs.

(2) The department shall not require an applicant to participate in a drug manufacturer patient assistance program or to disclose information that would determine the applicant's eligibility to participate in a drug manufacturer patient assistance program in order to participate in the program established pursuant to this division.

(d) In order to verify that California residents are being served by drug manufacturer patient assistance programs, the department shall require drug manufacturers to provide the department annually with all of the following information:

(1) The total value of the manufacturer's drugs provided at no or very low cost to California residents during the previous year.

(2) The total number of prescriptions or 30-day supplies of the manufacturer's drugs provided at no or very low cost to California residents during the previous year.

(e) The Cal Rx Plus card issued pursuant to this division shall serve as a single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a health benefit card.

CHAPTER 5. EMPLOYER-PAID HEALTH INSURANCE PRESCRIPTION DRUG DISCOUNTS

130540. The department may establish a prescription drug purchasing program to assist small businesses, small employer purchasing pools, Taft-Hartley trust funds, and other entities that purchase health coverage for employees of those employers and their dependents.

130541. No employer or other entity that purchases coverage for employees and dependents shall be eligible to participate unless the employer pays more than 50 percent of the cost of health coverage for their employees and their dependents.

130542. The department shall seek to obtain, and the department shall seek to contract for, drug rebates that result in a net price comparable to the Cal Rx Plus program.

130543. (a) The amount a participant pays for a drug through the program shall be equal to the participating provider's usual and customary charge or the pharmacy contract rate pursuant to subdivision (c), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.

(b) In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug's manufacturer and the state's share of the discount.

(c) The department may contract with participating pharmacies for a rate other than the pharmacies' usual and customary rate.

150544. The department shall work with employers, the California Chamber of Commerce, and other associations of employers as well as the California Labor Federation AFL-CIO and consumer organizations to develop and implement this chapter.

CHAPTER 6. ADMINISTRATION

130550. The Prescription Drug Advisory Board ("board") is established to review access to and the pricing of prescription drugs for residents of the state, to advise the Secretary on prescription drug pricing, and to provide periodic reports to the commissioner, the Governor, and the Legislature.

(a) No board member shall have a financial interest in pharmaceutical companies, or have worked for pharmaceutical companies or their agents or served within five years before being appointed to the board. No board member shall be employed for a pharmaceutical company for five years after serving on the board.

(b) The board shall consist of nine representatives of the public from the state at large. The Governor, the Senate President pro Tempore, and the Speaker of the Assembly shall each appoint three of these members. Legislative appointees shall serve staggered terms.

(c) (1) Of the three appointees by the Governor, one shall be a person over 65 enrolled in Medicare, one shall be from a school of pharmacy at the University of California, and one shall be an economist.

(2) Of the three appointees by the Speaker of the Assembly, one shall be a consumer or a representative of a recognized organization representing consumers eligible under this division, one shall be a retail pharmacist, and one shall be an employer or a representative of a recognized organization representing employers eligible for a business discount drug purchasing program.

(3) Of the three appointees by the Senate President pro Tempore, one shall be a labor trustee of a Taft-Hartley trust fund, one shall be a physician or nurse with expertise in drug benefits, and one shall be a member of the board of CalPERS.

(d) The term of office of board members shall be as follows:

(1) (A) A member appointed by the Governor shall serve for two years at the pleasure of the Governor, and may be reappointed for succeeding two-year periods, provided that the member may continue to serve beyond the two-year term until the Governor has acted and the appointee is authorized to sit and serve on the board.

(B) A member appointed by the Senate President pro Tempore or the Speaker of the Assembly shall serve for four years, and may be reappointed for succeeding four-year periods, provided that the member may continue to serve beyond the four-year term until his or her appointing authority has acted and the appointee is authorized to sit and serve on the board. If the Senate President pro Tempore or the Speaker of the Assembly has not acted within 60 days after the expiration of a member's term, the position shall become vacant until a person is appointed to a four-year term, calculated from the expiration date of the preceding term.

(2) If a vacancy occurs prior to the expiration of the term for the vacated seat, the appointing authority shall appoint a member for the remainder of the unexpired term pursuant to this chapter.

(3) On the effective date of the act, the Senate President pro Tempore shall appoint three members to serve two-year terms and the Speaker of the Assembly shall each appoint three members to serve four-year terms. All subsequent terms shall be for four years.

(d) Vacancies that occur shall be filled within 30 days after the occurrence of the vacancy, and shall be filled in the same manner in which the vacating member was selected or appointed.

(e) The board members shall select one of their members to serve as chairperson and one of their members to serve as vice chairperson on an annual basis. The chairman shall have the authority to call meetings of the Prescription Drug Advisory Board.

130552. Contracts entered into for purposes of this division are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts with pharmacies and drug manufacturers may be entered into on a bid or nonbid basis.

130553. To implement and administer Cal Rx Plus, the department may contract with a third-party vendor or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary. Drug rebate contracts negotiated by a third-party shall be subject to review by the department. The department may cancel a contract that it finds not in the best interests of the state or Cal Rx Plus participants.

130554. (a) The department shall deposit all payments the department receives pursuant to this division into the Cal Rx Plus Program Fund, which is hereby established in the State Treasury.

(b) The fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to this division and for defraying the costs of administering this division. Notwithstanding any other provision of law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund. The fund shall also contain any interest accrued on moneys in the fund.

130555. (a) The director may adopt regulations as are necessary for the initial implementation of this division. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.

(b) As an alternative to the adoption of regulations pursuant to subdivision (a), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2007. It is the intent that regulations adopted pursuant to subdivision (a) shall be in place on or before July 31, 2007.

CHAPTER 7. ENFORCEMENT

130570. The Attorney General, upon the Attorney General's own initiative or upon petition of the department or of 50 or more residents of the state, shall investigate suspected violations of this division.

130571. The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General related to any such matter under investigation. The summons must be served in the same manner as summonses for witnesses in criminal cases, and all provisions of law related to criminal cases apply to summonses issued under this section so far as they are applicable. All investigations or hearings under this section to which witnesses are summoned or called upon to testify or to produce books, records, or correspondence are public or private at the choice of the person summoned and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition, it must be held in the county in which the petitioners reside.

130572. A court of competent jurisdiction may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony before the Attorney General in the same manner and to the same extent as before the superior court. Any failure to obey such an order may be punishable by that court as a contempt.

130574. If the Attorney General fails to act within 180 days to investigate suspected violations of this division, any person acting for the interests of itself, its members, or the general public may seek to obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of up to one hundred thousand dollars ($100,000) or three times the amount of the damages, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 1.5. Division 112.5 (commencing with Section 130600) is added to the Health and Safety Code, to read:

DIVISION 112.5. PROFITEERING IN PRESCRIPTION DRUGS

130600. Profiteering in prescription drugs is unlawful and is subject to the provisions of this section. The provisions of this section apply to manufacturers, distributors, and labelers of prescription drugs. A manufacturer, distributor, or labeler of prescription drugs engages in illegal profiteering if that manufacturer, distributor or labeler:

(a) Exacts or demands an unconscionable price;

(b) Exacts or demands prices or terms that lead to any unjust or unreasonable profit;

(c) Discriminates unreasonably against any person in the sale, exchange, distribution, or handling of prescription drugs dispensed or delivered in the state; or

(d) Intentionally prevents, limits, lessens, or restricts the sale or distribution of prescription drugs in this state in retaliation for the provisions of this chapter.

130601. Each violation of this division is a civil violation for which the Attorney General or any person acting for the interests of itself, its members, or the general public may obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of one hundred thousand dollars ($100,000) or three times the amount of the damages, whichever is greater, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 2. (a) This act shall be broadly construed and applied in order to fully promote its underlying purposes. If any provision of this initiative conflicts directly or indirectly with any other provisions of law, or any other statute previously enacted by the Legislature, it is the intent of the voters that such provisions shall be null and void to the extent that they are inconsistent with this initiative and are hereby repealed.

(b) No provision of this act may be amended by the Legislature except to further the purposes of that provision by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature shall be deemed to further the purposes of this act unless it furthers the purpose of the specific provision of this act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

PROPOSITION 80

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Public Utilities Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Section 1. This measure shall be known and may be cited as "The Repeal of Electricity Deregulation and Blackout Prevention Act."

Section 2. (a) The people of the State of California find and declare all of the following:

(1) A reliable electricity system that delivers power to all consumers at just and reasonable prices is vital to the health, safety, and well-being of all Californians.

(2) Electricity is a unique good in modern society. It cannot be stored, must be delivered to the entire grid at the same time it is produced, and has no substitutes. Failure of supply for even a few seconds can lead to blackouts and disruption.

(3) The deregulation of the electricity market in California was a disastrous, ill-conceived experiment that led to rolling blackouts, supply shortages, and market manipulation, resulting in billions of dollars in excessive prices being borne by California ratepayers.

(4) The financial crisis and regulatory uncertainty that were created by the deregulated market have stifled investment in needed power plants.

(5) Deregulation of electricity, including the authorization of direct transactions, creates uncertainty regarding the customer base that must be served, making it impossible to conduct the long-term integrated resource planning that is necessary for an environmentally sound and reliable electricity system, and enables cost-shifting from large customers to small.

(6) Despite the past failures of electricity deregulation, its advocates are once again urging the Legislature and the Public Utilities Commission to launch a further experiment that may inflict additional damage on ratepayers and the California economy.

(b) In enacting this measure, it is the intent of the people to achieve the following policy goals:

(1) Ensure that all customers receive reliable retail electric service at just and reasonable rates.

(2) Provide a stable customer base for planning purposes, in order to assure resource adequacy and prevent inappropriate cost shifting. To that end, no new direct transactions shall be permitted, except as provided in this measure.

(3) Ensure that all rates, terms, and conditions of retail electric service are regulated by the Public Utilities Commission in a non-discriminatory manner as to all suppliers of retail electric service, and that all electricity service providers are under the jurisdiction of the commission.

(4) Ensure that the electrical system is developed in a manner that mitigates and minimizes any adverse environmental impacts to the maximum extent reasonably practicable by, among other things, requiring that each retail seller of electricity obtain at least 20 percent of its retail sales from eligible renewable energy resources no later than December 31, 2010.

Section 3. Section 218.3 of the Public Utilities Code is amended to read:

218.3. "Electric service provider" means an entity that offers electrical service to customers within the service territory of an electrical corporation, as defined in Section 218, but does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218. *An electric service provider is subject to the jurisdiction, control, and regulation of the commission and the provisions of this part, pursuant to subdivision (f) of Section 394.*

Section 4. Section 330 of the Public Utilities Code is repealed.

~~330. In order to provide guidance in carrying out this chapter, the Legislature finds and declares all of the following:~~

~~(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.~~

~~(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars ($23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.~~

~~(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.~~

~~(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.~~

~~(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.~~

~~(f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.~~

~~(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.~~

~~(h) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.~~

~~(i) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.~~

~~(j) It is the intent of the Legislature that California enter into a compact with western region states. That compact should require the publicly and investor-owned utilities located in those states, that sell energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.~~

~~(k) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:~~

~~(1) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing.~~

~~(2) Permit all customers to choose from among competing suppliers of electric power.~~

~~(3) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services.~~

~~*(l)* The commission has properly concluded that:~~

~~(1) This competition will best be introduced by the creation of an Independent System Operator and an independent Power Exchange.~~

~~(2) Generation of electricity should be open to competition.~~

~~(3) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted.~~

~~(4) These new market institutions should commence simultaneously with the phase in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in subdivisions (s) to (w), inclusive, are in place simultaneously and no later than January 1, 1998.~~

~~(m) It is the intention of the Legislature that California's publicly owned electric utilities and investor-owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants.~~

~~(n) Opportunities to acquire electric power in the competitive market must be available to California consumers as soon as practicable, but no later than January 1, 1998, so that all customers can share in the benefits of competition.~~

~~(o) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories.~~

~~(p) Consistent with federal and state policies, California electrical corporations invested in power plants and entered into contractual obligations in order to provide reliable electrical service on a nondiscriminatory basis to all consumers within their service territories who requested service.~~

~~(q) The cost of these investments and contractual obligations are currently being recovered in electricity rates charged by electrical corporations to their consumers.~~

~~(r) Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations.~~

~~(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.~~

~~(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible.~~

~~(u) The transition to expanded customer choice, competitive markets, and performance based ratemaking as described in~~

~~Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.~~

~~(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:~~

~~(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.~~

~~(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.~~

~~(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.~~

~~(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.~~

Section 5. Section 365 of the Public Utilities Code is repealed.

~~365. The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330. In addition, the commission shall do all of the following:~~

~~(a) Facilitate the efforts of the state's electrical corporations to develop and obtain authorization from the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the commission, and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The commission shall also participate fully in all proceedings before the Federal Energy Regulatory Commission in connection with the Independent System Operator and the independent Power Exchange, and shall encourage the Federal Energy Regulatory Commission to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, encourage all publicly owned utilities in California to become full participants, and maximize enforceability of such protocols and procedures by all market participants.~~

~~(b) (1) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in subdivision (a). The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase-in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any phase-in of customer eligibility for direct transactions ordered by the commission shall be equitable to all customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.~~

~~(2) Customers shall be eligible for direct access irrespective of any direct access phase-in implemented pursuant to this section if at least one-half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.~~

Section 6. Section 365.5 of the Public Utilities Code is repealed.

~~365.5. Nothing in this chapter shall prevent the commission from exercising its authority to investigate a process for certification and regulation of the rates, charges, terms, and conditions of default service. If the commission determines that a process for certification and regulation of default service is in the public interest, the commission shall submit its findings and recommendations to the Legislature for approval.~~

Section 7. Section 366 of the Public Utilities Code is repealed.

~~366. (a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2.~~

~~(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.~~

Section 8. Section 366 is added to the Public Utilities Code, to read:

366. (a) No new direct transactions for retail electric service may be entered into after the effective date of this act, except by those customers of an electrical corporation who were being served via a direct transaction on January 1, 2005.

(b) A customer who was being served via a direct transaction on January 1, 2005, may return to service by an electrical corporation upon one year's notice to the electrical corporation, and thereafter may not enter into a new direct transaction. If a customer returns to service by an electrical corporation prior to the expiration of the one year notice period, that customer shall pay a generation rate that is equal to the higher of the electrical corporation's bundled generation portfolio price or the current short-term market price until the one year notice period has elapsed.

(c) A customer that was being served via a direct transaction on January 1, 2005, may take temporary default service from an electrical corporation, at a generation rate that is equal to the higher of the electrical corporation's bundled generation portfolio price or the current short-term market price, for a period of no longer than 120 days. If the customer does not enter into a new direct transaction by the end of the 120 day period, that customer may not thereafter enter into a new direct transaction, and shall continue to be served by the electrical corporation at the default service rate for a period of one year, at which point the customer will be charged the bundled generation portfolio price.

(d) Any customer that the commission has determined, in its Decision 02-11-022, is responsible to pay a cost recovery surcharge as a condition of having purchased electricity via a direct transaction shall continue to pay the cost recovery surcharge until full collection is achieved.

(e) Nothing in this section alters the provisions of Sections 366.1 and 366.2, relating to community choice aggregation.

Section 9. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, "electric service provider" means an entity that offers electrical service to customers within the service

territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and does not include a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the electric service provider is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition, each electric service provider shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the electric service provider specified by any commission decision applicable to all electric service providers. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine an electric service provider's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the electric service provider, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatthours of electricity it expects to provide, and any other appropriate criteria to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.

(c) Any registration filing approved by the commission prior to the effective date of this section which does not comply in all respects with the requirements of subdivision (a) of Section 394 shall nevertheless continue in force and effect so long as within 90 days of the effective date of this section the electric service provider undertakes to supplement its registration filing to the satisfaction of the commission. Any registration that is not supplemented by the required information within the time set forth in this subdivision shall be suspended by the commission and shall not be reinstated until the commission has found the registration to be in full compliance with subdivision (a) of Section 394.

(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with the commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

~~(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.~~

(f) Registration with the commission is an exercise of the licensing function of the commission, and registration by an electric service provider constitutes agreement of the electric service provider to the jurisdiction, control, and regulation of its rates and terms and conditions of service by the commission. The commission shall exercise such jurisdiction, control, and regulation of electric service providers in their provision of electrical service in the same manner as its exercise of jurisdiction, control, and regulation of electrical corporations, including, but not limited to, enforcement of: energy procurement and contracting standards and requirements; resource adequacy requirements; energy efficiency and demand response requirements; renewable portfolio standards; and appropriate assignment of costs among customers to prevent cost shifting.

Section 10. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables, and subject to all of the following:

(1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

~~(1) Beginning on January 1, 2003, each electrical corporation shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.~~

(1) Beginning on January 1, 2003, each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

(2) Only for purposes of establishing these targets, the commission shall include all power sold to retail customers by the Department of

Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables.

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available output.

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

Section 11. Chapter 2.4 (commencing with Section 400) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

CHAPTER 2.4. THE RELIABLE ELECTRIC SERVICE ACT

400. This chapter shall be known, and may be cited, as the Reliable Electric Service Act.

400.1. The commission and the Legislature shall do all of the following:

(a) Restore and affirm the electric utility's obligation to serve all of its customers reliably and at just and reasonable rates.

(b) Eliminate opportunities for market manipulation and assure the best value for consumers by authorizing cost-based construction and operation of new electric plants as well as competitive utility wholesale electricity procurement.

(c) Protect consumers, the environment, and the reliability of the electricity system, by establishing a comprehensive long-term integrated resource planning process, under regulation, in order to ensure resource adequacy and reasonably priced electricity. Such a process shall include, as a first priority, funding of all cost-effective energy efficiency and conservation programs, and increasing the proportion of electricity provided from cost-effective renewable resources.

(d) Establish and enforce resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at such locations and at such times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates. Resource adequacy requirements shall apply in a nondiscriminatory manner to all load serving entities.

(e) Advance and promote opportunities for consumers to use innovative new technologies, such as distributed generation, consistent with grid reliability and environmental protection and improvement, provided that residential and small commercial customers with average usage of less than 1,000 kilowatt-hours per month and occupying a building that was constructed prior to January 1, 2006, shall not be required to take service under a time-differentiated rate schedule without their affirmative written consent.

400.2. (a) An electrical corporation has an obligation to plan for and provide its customers with reliable electric service at just and reasonable rates, pursuant to Section 451, including those customers who purchase standby service from the electrical corporation.

(b) For purposes of this chapter, "electric service" includes providing adequate and efficient resources, including utility-owned and procured generation resources, such as new and repowered generation resources, cogeneration, and renewable generation resources, transmission and distribution resources, metering and billing, funding for cost-effective energy efficiency and other demand reduction resources, and employing an adequately sized, well-trained utility workforce, including contracting for maintenance of generation facilities.

400.3. (a) The Public Utilities Commission shall establish a process of resource selection and procurement that achieves the best value for ratepayers as its primary goal.

(b) The commission shall ensure that each electrical corporation achieves the best value for its ratepayers by maintaining a diversified portfolio of non-utility generation under contract with the utility and utility-owned generation, consistent with the electrical corporation's approved long-term integrated resource plan, taking into account price, reliability, stability, efficiency, cost-effectiveness, system impacts, resource diversity, financial integrity of the utility, risk, and environmental performance.

(c) The resource selection process may achieve the best value for ratepayers, as described in subdivisions (a) and (b), by utilizing the following approaches to compare the benefits and costs of alternative resource options:

(1) Competitive solicitations for non-utility generation.

(2) Bilateral contracts for non-utility generation.

(3) Cost-based utility-owned generation that is regulated by the commission.

(d) For purposes of this act, "non-utility generation" means facilities for the generation of electricity owned and operated by an entity other than an electrical corporation; and "load serving entity" does not include a local publicly owned electric utility as defined in Section 9604, the State Water Resources Development System commonly known as the State Water Project, or customer self-generation.

400.4. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to such locations and at such times as may be necessary to ensure local area reliability and system reliability at just and reasonable rates.

(b) The commission shall implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities.

(c) Resource adequacy requirements established by the commission shall provide for and assure all of the following:

(1) System wide and local area grid reliability.

(2) Adequate physical generating capacity dedicated to serve all load requirements, including planning and operating reserves, where and when it is needed.

(3) Adequate and timely investment in new generating capacity to meet future load requirements, including planning and operating reserves.

(4) Market power mitigation.

(5) Deliverability.

(6) Resource commitments by load serving entities at least three years in advance of need, in order to assure that new resources can be constructed if necessary to meet the need.

(d) Pursuant to its authority to revoke or suspend registration pursuant to Section 394.25, the commission shall suspend the registration for a specified period, or revoke the registration, of an electric service provider that fails to comply with the rules and regulations adopted by the commission to enforce resource adequacy requirements.

Section 12. The Legislature may amend this act only to achieve its purposes and intent, by legislation receiving at least a two-thirds vote of each house and signature by the Governor.

Section 13. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.